IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 157 of 1995

Date of decision : August 29, 2007.

Gulzar Singh

... Petitioner

versus

State of Haryana

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. K.S. Dhaliwal, Advocate
for the petitioner.

Mr. K.S. Godara, DAG, Haryana
for the respondent.

A.N. Jindal, J

The possession of two drums of lahan fit for distilling, allegedly recovered from the petitioner-accused Gulzar Singh (hereinafter referred to as 'the petitioner'), invited his prosecution. Consequently, he faced trial under Section 61(i)(a) of the Punjab Excise Act, 1961, which ended in conviction vide judgment dated 16/17.4.1993 passed by the Judicial Magistrate Ist Class, Narwana. The appeal was also dismissed by the learned Additional Sessions Judge-II, Jind, vide its judgment dated 14.2.1995.

The case was registered against the petitioner by S.I. Ghisa Ram, on the basis of the secret information, which he received on 19.7.1989 to the effect that the petitioner was habitual of distilling and selling of illicit liquor. Believing the information to be reliable, he sent ruqa Ex.PA to the police station, on the basis of which FIR Ex.PA/1 was registered. A raid was conducted on the Farm House of the petitioner, where he was seen. He

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disclosed before the Investigating Officer vide his statement Ex.PB that he had kept concealed two drums containing lahan weighing 180 kgs in his house and then in pursuance of the said statement, he got recovered the said contraband. The Investigating Officer took the lahan into possession; recorded statements of the witnesses; and on receipt of the report of the Excise Inspector, the petitioner was challaned.

The prosecution examined ASI Ghisa Ram (PW1), HC Nar Singh (PW2) and R.D. Bishnoi, Excise Inspector (PW3) in its evidence.

When examined under Section 313 Cr.P.C. the petitioner while pleading innocence pleased his false implication. However, no evidence was led in defence.

Having perused the records of the case, it is observed that the trial Court as well as the Appellate Court have consistently placed reliance on the testimony of the official witnesses and while believing their statements relied upon ***Bhagwan Dass alias Bhana Ram vs. The State of Punjab, 1982 P.L.R. 566***, wherein it was observed as under :-

> *"The presumption that a person acts honestly applied as much in favour of police officer as of other person, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude could do neither good credit to the Magistracy nor good to the police. It can only run down the prestige of the police administration. It perhaps deserves highlighting that the substantial issues of a criminal trial like the proof and punishment of serious crime ought not*

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to be converted into a play shing of technicalities. The canvas of the criminal law is a bigger and a broader one, where matters of substance and truth have pre-eminence."

Again the Appellate Court relied upon the judgments delivered in case ***Shamsher Singh vs. State of Punjab 1992 (1) RCR (Crl.) 44*** and ***State of Punjab vs. Gurdial Singh 1992 (1) RCR (Crl.) 647***, wherein it was observed that non production of the case property is not fatal as it is merely a corroborative piece of evidence. Non production of the case property is not fatal in each and every case as the shabby condition of the malkhana in the States of Punjab and Haryana cannot be ignored. The situation is so grim that majority of the articles remain lying subject to the exposure of storm, heat, flood and rodents, therefore, except the case property consisting of small tins, which are kept in the four walls covered by a roof, the remaining properties normally are perished or decayed unless taken care of. In this situation, non production of the case property cannot be taken as a fatal circumstance against the prosecution. The witnesses examined by the prosecution are consistent in their statements. The report of the Excise Inspector, who checked the case property, lends corroboration to their testimonies.

As such, I do not see any reason to disturb the findings returned by both the Courts below holding the accused guilty of the offence.

Now coming to quantum of sentence, the Appellate Court while refusing to extend benefit of probation, should have given the specific reasons, if the convict is not dealt with under Section 360 Cr.P.C. Reliance

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if any can be placed over the judgment delivered in case ***Manohar Lal vs. State of Punjab, 2004 (1) RCR (Criminal) 656,*** wherein it was observed as under :-

> *"The provisions of Section 361 Cr.P.C. are mandatory in nature and enjoin upon the court to give specific reason if convict is not dealt with under Section 360 Cr.P.C. as it has been laid down in* **Bishnu Deo Shah vs. State of West Bengal, AIR 1979 SC 964**. *Therefore, it is obligatory on the part of the Court to deal with a convict when he is not convicted of an offence not punishable with death or imprisonment for life and no previous conviction is proved against the offender....."*

Here, in this case, the petitioner was refused the aforesaid benefit without assigning reason therefor. As such, the order of sentence deserves to be modified. The petitioner in this case remained in custody for one month and six days. He is not a previous convict. No evidence has been led by the prosecution to establish his past criminal activities, so taking into consideration the conduct of the petitioner and the antecedents, I am not inclined to deny him the concession as bestowed by the provisions of Probation of Offenders Act.

In view of the circumstances explained above, the petitioner, is therefore, ordered to be released on probation for a period of one year, on furnishing personal bond in the sum of Rs.10,000/- with one surety of the like amount under Section 4(1) of the Probation of Offenders Act. He is directed to keep peace and be of good behaviour during this period. However, the petitioner will pay Rs.20,000/- on account of costs of litigation, which will go to the State.

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With the above modification in the sentence, the revision fails and is hereby dismissed.

Copy of the judgment be sent to the trial Court for intimation and compliance.

August 29, 2007 **(A.N. Jindal)**
'deepak' **Judge**